

Draft Advisory 14-1: Public Employees' Private Business Relationships And Other Private Dealings With Those Over Whom They Have Official Authority Or With Whom They Have Official Dealings

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Introduction

G.L. c. 268A, § 23 prohibits the acceptance by a public employee of anything worth \$50 or more that was given because of the public employee's official position,¹ and also prohibits the use by a public employee of his official position to obtain unwarranted privileges worth \$50 or more.² In addition, this section of the law prohibits a public employee from acting in a manner which would cause a reasonable person to conclude that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties.³

The Commission has long interpreted this section of the law as restricting the ability of public employees to engage in private business relationships or other private dealings with persons over whom they have official authority or with whom they have official dealings. In numerous opinions over the past thirty years, the Commission has concluded that such private business relationships and other private dealings are inherently coercive, and therefore violate § 23(b)(2), because the person or entity under the public employee's official authority, or with whom the public employee has official dealings, may not feel free to decline to enter into a private business relationship, or may feel obliged to give the public employee favorable treatment. In addition, the public employee's impartiality in performing his official duties, when those duties involve or affect those with whom he has a private business relationship or other private dealings, may appear to be compromised, in violation of § 23(b)(3).⁴

The most common types of private business relationships and private dealings that have resulted in the Commission finding violations or potential violations of §§ 23(b)(2) and 23(b)(3) are those in which public employees have asked someone under their official authority, or with whom they were having official dealings, to do any of the following: privately work for or provide services to them; buy goods or services from them; give them (or someone else) paid employment; give or lend them money; donate to a private cause; give them special or favorable treatment in making a purchase; or buy, sell, or rent real estate. This list is not exhaustive. Examples of private business relationships and private dealings where the Commission has found violations of §§ 23(b)(2) and/or 23(b)(3), or has advised a public employee to avoid a violation of those sections, are set forth in the bullet points in Part I below.

In certain circumstances, where certain safeguards are present, private business relationships and other private dealings between public employees and those under their official authority or with whom they have official dealings are permissible. Specifically, such private business relationships and other private dealings are permissible under §§ 23(b)(2) and 23(b)(3)

¹ G.L. c. 268A, § 23(b)(2)(i); 930 CMR 5.05 (defining "substantial value" as \$50 or more).

² G.L. c. 268A, § 23(b)(2)(ii).

³ G.L. c. 268A, § 23(b)(3).

⁴ *EC-COI-12-1*, 95-9, 93-23, 93-6, 92-35, 92-28, 92-18, 92-12, 92-7, 90-9, 84-61.

only when: (1) the private business relationship or other private dealing is initiated by the person or entity under the public employee's authority, or with whom the public employee has or expects to have official dealings, and not by the public employee; (2) the private business relationship or other private dealing is entirely voluntary; (3) the private business relationship or other private dealing does not involve special or favorable treatment given to the public employee because of his official position; and (4) the private business relationship or other private dealing is disclosed publicly in writing by the public employee.⁵ This Advisory explains when these restrictions apply (Part I) and how to comply with them (Part II).

The conflict of interest law does not prohibit public employees from engaging in ordinary retail transactions, where the purchase price and other terms are fixed, published and available to any member of the public. For example, a selectman who participates in the issuance of common victualler and alcoholic beverage licenses to restaurants may patronize restaurants licensed by his board, order from their menus, and pay the menu price, without raising any issue under the conflict of interest law. If, however, the selectman wished to approach a restaurant licensed by his board to negotiate the terms on which the restaurant would cater a private event, he would need to comply with the restrictions noted above and explained in more detail below.

I. What Constitutes "Official Authority" or "Official Dealings"?

This section of this Advisory summarizes Commission enforcement actions and advisory opinions where the Commission has either found a violation of §§ 23(b)(2) and/or 23(b)(3), or has advised on how a violation may be avoided, to illustrate what constitutes "official authority" and "official dealings." "Official authority" and "official dealings" are not mutually exclusive. A public employee may have official authority over someone with whom he is also having official dealings (for example, the Executive Director of a Housing Authority has official authority over all applicants for public housing from his agency, and may have official dealings with some applicants if he handles their applications personally). A public employee may have official authority over someone with whom she has no official dealings (the head of an agency has official authority over all agency employees, including those managed by her subordinates with whom she has no contact); or may have official dealings with someone over whom he has no official authority (for example, by responding to a request for information by a member of the public). This Advisory uses the terms "official authority" and "official dealings" to summarize the kinds of situations in which public employees' positions give them power over others. In the enforcement actions and advisory opinions summarized below, the Commission found that public employees had power over others arising from their official authority over them, their official dealings with them, or some combination of the two, such that a private business relationship or other private dealing was subject to the restrictions of §§ 23(b)(2) and 23(b)(3).

A. Official Authority

A public employee does not have official authority over every person or entity with whom her public agency has contact. In past enforcement actions and advisory opinions, the Commission has concluded that particular public employees had official authority over the

⁵ *EC-COI-12-1*, 95-9, 92-35, 92-7; G.L. c. 268A, § 23(b)(2)(i).

following persons or entities: their subordinates and those managed by their subordinates; vendors and consultants whose contracts they or their subordinates managed; recipients of public benefits from a program administered by the public employee's agency who were within the geographic area where the public employee worked; inmates in custody at facilities where the public employee worked; persons and entities granted permits or licenses by a board on which the public employee serves as a member; and persons and entities subject to the public employee's official inspection.⁶ When a public employee has official authority over a person or entity, her private business relationships and other private dealings with that person or entity are subject to the restrictions of G.L. c. 268A, §§ 23(b)(2) and 23(b)(3).

Subordinates. A public employee's immediate subordinates, as well as their subordinates, are under the public employee's official authority.⁷ By contrast, other employees of the same agency who are not supervised even indirectly by the public employee generally are not under the public employee's official authority. Below are some examples of Commission precedent regarding the application of §§ 23(b)(2) and 23(b)(3) to private business relationships and other private dealings with public employees' subordinates.

- The Chair of a municipal college Board of Governors violated § 23(b)(2) by asking her subordinate, the college President, to consider hiring her brother.⁸
- A School Committee member violated §§ 23(b)(2) and 23(b)(3) by obtaining a private agreement concerning reimbursement of expenses from the Superintendent, his subordinate.⁹
- A Superintendent of Schools violated § 23(b)(2) by permitting the School Department's Maintenance Manager to arrange for the School Department plumber to work on the bathrooms and kitchen at the Superintendent's house.¹⁰
- A municipal building inspector violated §§ 23(b)(2) and 23(b)(3) by obtaining free services (moving a dishwasher and plowing snow) from subordinate building inspectors.¹¹
- A municipal Department of Public Works Commissioner violated §§ 23(b)(2) and 23(b)(3) by borrowing money from a direct subordinate.¹²
- A legislative aide to a member of the General Court was advised that he could engage in compensated campaign work for his direct supervisor only subject to the restrictions of §§ 23(b)(2) and 23(b)(3).¹³
- A Sheriff violated § 23(b)(3) by hiring and paying jail maintenance employees to construct a tennis court fence at his private residence, and by using a jail employee to move refrigerators to and from his summer home in Maine.¹⁴

⁶ This list of categories of official authority is illustrative, not exhaustive.

⁷ *EC-COI-95-9*, 92-7, 84-61.

⁸ *In Re Piatelli*, 2010 SEC 2296, 2301-2.

⁹ *In Re Wormser*, 2010 SEC 2304, 2309-2311.

¹⁰ *In Re Foresteire*, 2009 SEC 2220.

¹¹ *In Re Galewski*, 2007 SEC 2101.

¹² *In Re Corson*, 1998 SEC 912, 913.

¹³ *EC-COI-92-7*.

¹⁴ *In Re Garvey*, 1990 SEC 478.

- A Superintendent of Schools violated § 23(b)(3) by borrowing \$5,000 from a teacher subject to his supervisory authority and \$3,000 from an employee of the school department.¹⁵

Vendors or Consultants to a Public Agency. A vendor or consultant whose contract is managed by the public employee or by his subordinates is under the public employee's official authority.¹⁶ By contrast, vendors to an agency who do not deal with a particular public employee or any of his subordinates are not under that public employee's official authority. Below are some examples of Commission precedent regarding the application of §§ 23(b)(2) and 23(b)(3) to public employees' private business relationships and other private dealings with vendors or consultants whose contracts they or their subordinates managed. As noted above, public employees are not prohibited by the conflict of interest law from engaging in ordinary retail transactions, where the purchase price and other terms are fixed, published and available to any member of the public.

- A Sheriff's Department Fleet Supervisor violated §§ 23(b)(2) and 23(b)(3) by telling a vendor of vehicles and equipment from whom he purchased vehicle equipment in his Fleet Supervisor position that he wanted to purchase a used car, and subsequently obtaining a used car for his personal use from the vendor.¹⁷
- The Speaker of the House of Representatives violated § 23(b)(3) by participating in various private transactions with a vendor who did work for his office without disclosing the fact that he was doing so.¹⁸
- The head of a public agency was advised that § 23(b)(2) prohibited him from inviting agency vendors to participate in campaign-related events.¹⁹
- A County Commissioner was advised that § 23(b)(2) prohibited him from soliciting private insurance business from county vendors.²⁰
- The Mayor of Boston was advised in a public compliance letter that he should not have permitted private individuals and businesses that did business with the City to be asked to contribute money for a birthday party for his wife, pursuant to § 23.²¹

Recipients of Public Benefits from Programs Administered by Public Agencies. A public employee who works for a public agency that provides public benefits has official authority over recipients of those benefits within the geographic area in which the public employee works, but not over recipients of benefits from the same agency in different geographic areas. For example:

- The Executive Director of a Housing Authority violated § 23(b)(2) by privately negotiating to purchase a house (later purchased by his father) from persons applying for a housing unit from his agency.²²

¹⁵ *In Re Lannon*, 1984 SEC 208.

¹⁶ *EC-COI-95-9, 92-7, 90-9, 82-124*.

¹⁷ *In Re Rowan*, 2010 SEC 2293.

¹⁸ *In Re Keverian*, 1990 SEC 460, 462.

¹⁹ *EC-COI-90-9*.

²⁰ *EC-COI-82-124*.

²¹ *In Re White*, 1982 SEC 80 (involved predecessor sections to § 23(b)(2) and 23(b)(3)).

- Employees of the state Department of Public Welfare were advised that §§ 23(b)(2) and 23(b)(3) prohibited them from privately renting property to recipients of public assistance benefits in the geographic area in which they worked, but would not prohibit them from privately renting property to Department clients who resided outside that area.²³
- An employee of the state Department of Mental Health (DMH) was advised that §§ 23(b)(2) and 23(b)(3) would prohibit him from selling household products privately to his DMH clients or their family members, but would not prohibit him from selling products to DMH clients with whom he had no official contact, provided that he did not use his position as leverage to encourage purchases.²⁴

Persons In Custody. Persons who are in the custody of a public agency and are being held in a facility where a public employee works are under the public employee's official authority. For example:

- A correction officer violated §§ 23(b)(2) and 23(b)(3) by purchasing a house from an inmate at the facility where the officer worked.²⁵
- A senior correction officer was advised that his distribution to inmates at his facility of mail order catalogs offering products for sale, and for the sale of which he would receive a commission, was prohibited by § 23.²⁶

Permittees and Licensees. Where a public employee is a member of a permitting or licensing board, the permitted or licensed professionals or entities are under his official authority. Below are some examples of Commission precedent regarding the application of §§ 23(b)(2) and 23(b)(3) to public employees' private business relationships and other private dealings with licensees. As noted above, public employees are not prohibited by the conflict of interest law from engaging in ordinary retail transactions, where the purchase price and other terms are fixed, published and available to any member of the public.

- A member of a municipal Board of Health with authority over potable water supplies, which could approve building permits based on well water sample results, violated §§ 23(b)(2) and 23(b)(3) by attempting to make a private sale of a water filtration system to a person seeking approval of a building permit from his Board.²⁷
- A member of a municipal liquor licensing board violated §§ 23(b)(2) and 23(b)(3) by approaching package stores licensed by his board to persuade them to continue buying ice from his own private company.²⁸

²² *In Re Daly*, 2008 SEC 2143. This case involved official dealings (the Executive Director handled the application personally) as well as official authority.

²³ *EC-COI-92-35*.

²⁴ *EC-COI-82-64*.

²⁵ *In Re Laumann*, 2010 SEC 2287.

²⁶ *EC-COI-82-64*.

²⁷ *In Re Hamilton*, 2006 SEC 2043. This case involved official dealings (the board member was participating in the permitting decision) as well as official authority.

²⁸ *In Re Parisella*, 1995 SEC 745.

- A member of a municipal liquor licensing board who was also a real estate broker violated §§ 23(b)(2) and 23(b)(3) by approaching the owner of a business licensed by his board to obtain an exclusive real estate listing.²⁹

Persons and Entities Subject to Inspection. A public employee who has authority to inspect businesses and premises has official authority over those subject to his inspection power. By contrast, a clerical or support staff employee of a public agency does not have official authority over persons and businesses subject to her agency's inspection power. Below are some examples of Commission precedent regarding the application of §§ 23(b)(2) and 23(b)(3) to public employees' private business relationships and other private dealings with persons and entities subject to their inspection. As noted above, public employees are not prohibited by the conflict of interest law from engaging in ordinary retail transactions, where the purchase price and other terms are fixed, published and available to any member of the public.

- A municipal building inspector violated §§ 23(b)(2) and 23(b)(3) by asking a contractor subject to his authority as an inspector to replace his personal mailbox and plow snow from his driveway.³⁰
- A municipal health agent violated §§ 23(b)(2) and 23(b)(3) by seeking a "referral fee" for his assistance in helping to sell a property on which he had observed a percolation test for the seller.³¹
- A Fire Chief with inspection power over new construction violated § 23(b)(2) by seeking private drywall construction work from a developer subject to his inspection power.³²
- A Department of Public Utilities inspector of commercial vehicles violated §§ 23(b)(2) and 23(b)(3) by soliciting private work from tow truck operators over whom he had inspection authority.³³

B. Official Dealings

Even when a public employee does not have official authority over someone by reason of her public agency's organizational structure, the public employee may be able to obtain an advantage in a private business relationship or other private dealing with a person or entity if she has, or expects to have, official dealings with that person or entity. The public employee's power to affect that person or entity in the context of their official dealings makes such situations inherently coercive. Thus, the Commission generally will find that the restrictions of §§ 23(b)(2) and 23(b)(3) apply in situations where a public employee seeks to enter a private business relationship or engage in some other private dealing with someone at a time when that person or entity may be directly and significantly affected by the public employee's actions.³⁴ For example:

²⁹ *In Re Zeppieri*, 1990 SEC 448.

³⁰ *In Re Galewski*, 2007 SEC 2101.

³¹ *In Re Hartford*, 1991 SEC 512.

³² *In Re Singleton*, 1990 SEC 476, 477.

³³ *In Re Bagni*, 1981 SEC 30 (involved predecessor sections to §§ 23(b)(2) and 23(b)(3)).

³⁴ *EC-COI-12-1*, 93-23, 84-61.

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- A member of the Board of Registration in Pharmacy violated § 23(b)(2) by approaching a pharmaceutical provider that had matters pending before his Board on behalf of a private client.³⁵
- A Sheriff violated §§ 23(b)(2) and 23(b)(3) by asking a person on whom he was serving process in his role as Sheriff to sell him her property.³⁶
- A State Representative violated § 23(b)(2) by requesting that a bank donate to a non-profit entity during a meeting at which the Representative was introduced to bank employees as the co-chair of the Joint Committee on Banks and Banking, and during a time period when the banking committee was addressing a variety of matters affecting banks.³⁷
- A municipal Department of Public Works Associate Commissioner responsible for operation of the municipal cemetery violated §§ 23(b)(2) and 23(b)(3) by obtaining “loans” from funeral home directors with whom he regularly dealt in arranging burial services.³⁸
- A police officer who was also president of a voluntary police association was advised that § 23(b)(2) would prohibit officers soliciting donations for the association from implying that a decision whether or not to donate could affect the timing or quality of police services.³⁹
- A municipal Retirement Board member was advised that §§ 23(b)(2) and 23(b)(3) would prohibit him from marketing private investment services to the towns, districts, and county which were members of a public contributory retirement system, where the Board of which he was a member administered that retirement system’s funds.⁴⁰
- A member of the Board of Registration in Veterinary Medicine violated §§ 23(b)(2) and 23(b)(3) by making known to the management of a racetrack that employed 12 veterinarians licensed by his Board, and whose licenses could be suspended or revoked by his Board, that he was a Board member, and then requesting free season passes and a free parking sticker from the racetrack.⁴¹
- A legislator was advised that §§ 23(b)(2) and 23(b)(3) would prohibit him from marketing tax shelter arrangements to persons with a specific interest in a piece of legislation before him.⁴²
- A county treasurer violated § 23(b)(3) by soliciting personal loans from a bank at the same time that he was investing county funds or opening county accounts at the bank.⁴³
- A State Representative violated §§ 23(b)(2) and 23(b)(3) by attempting to secure grant funding from an agency for a community development corporation at a time

³⁵ *In Re Tocco*, 2011 SEC 2377.

³⁶ *In Re Bretschneider*, 2007 SEC 2082.

³⁷ *In Re Travis*, 2001 SEC 1014.

³⁸ *In Re Corson*, 1998 SEC 912.

³⁹ *EC-COI-93-6*.

⁴⁰ *EC-COI-92-18*.

⁴¹ *In Re Trodella*, 1990 SEC 472.

⁴² *EC-COI-84-61*.

⁴³ *In Re Antonelli*, 1982 SEC 101, 110.

when a matter of importance to the agency was pending before a committee of which the Representative was a member.⁴⁴

II. Public Employees May Have Private Business Relationships Or Other Private Dealings With Those Over Whom They Have Official Authority Or With Whom They Have Official Dealings Only If: (A) The Other Party Initiated the Private Business Relationship Or Other Private Dealing; (B) The Private Business Relationship Or Other Private Dealing is Entirely Voluntary; (C) The Public Employee is Not Receiving any Special or Favorable Treatment of Substantial Value Because of his Position; and (D) The Circumstances Are Fully Disclosed in Writing by the Public Employee.

A public employee may not initiate a private business relationship or other private dealing with someone over whom he has official authority, or with whom he has official dealings (the "other party").⁴⁵ Even when the private business relationship or other private dealing is initiated by the other party and not by the public employee, such a private business relationship or other private dealing still raises concerns because of the inherently coercive nature of such relationships or dealings.⁴⁶ Consequently, such a private business relationship or other private dealing is permissible only if all of the following are true:

- (A) it was initiated by the other party;
- (B) it is entirely voluntary on the part of the other party;
- (C) the public employee does not receive special or favorable treatment of substantial value because of his position; and
- (D) the public employee publicly discloses the circumstances in writing.

A. The Private Business Relationship Or Other Private Dealing Must Be Initiated by the Other Party.

A person or entity who is under the official authority of a public employee, or who is having official dealings with a public employee, may initiate a private business relationship or other private dealing with a public employee by approaching the public employee and suggesting the private business relationship or other private dealing. For example, a subordinate employee may initiate a private business relationship with his supervisor. The supervisor, however, may not initiate a private business relationship with his subordinate.

A person or entity who is under the official authority of, or having dealings with, a public employee, may initiate a private business relationship with the public employee by giving a public indication of willingness to enter into business relationships of that nature, for example, by publicly advertising the availability of his or his company's services, or by publicly advertising an available position to be filled. Where there has been such an advertisement, the private business relationship will be considered to have been initiated by the other party, and the public employee may approach the other party using the contact information provided in the advertisement, in the same way that any other customer of the company, or applicant for

⁴⁴ *In Re Craven*, 1980 SEC 17, aff'd 390 Mass. 191, 202 (1983).

⁴⁵ *EC-COI-93-23, 93-6, 92-35, 92-28, 92-18, 92-12, 92-07.*

⁴⁶ *EC-COI-92-7.*

employment, would do. The public employee must not make the approach in the context of the official relationship, such as, at the public workplace, before, during or after a meeting, or through use of a public office telephone or email account.

Example: A selectman owns a house that he would like to rent to the new town administrator, who is seeking rental housing. Because the town administrator is under the selectman's official authority, the selectman may not suggest to him that he rent the house. However, if the selectman advertises the house for rent and the town administrator responds to that advertisement, the transaction will be deemed to have been initiated by the town administrator, and will be permissible so long as it is entirely voluntary, does not involve special or preferential terms, and the selectman makes a written disclosure.

Example: The Superintendent of Schools wants to hire someone to build a deck on his home. One of the high school carpentry instructors owns a private construction company that builds decks and advertises its services. The Superintendent may contact the company using the advertised contact information and seek its services. If the company agrees to do the work, the Superintendent may enter into this private business relationship, as long as the relationship is entirely voluntary, the Superintendent does not receive any special or favorable treatment, such as expedited scheduling or a reduced price, and the Superintendent makes a written disclosure.

Pre-existing private business relationships

From time to time, a public employee may obtain or be promoted to a position in which he has official authority over someone with whom he has a pre-existing private business relationship. In that situation, because the official relationship did not exist when the private business relationship commenced, there was no requirement that the private business relationship have been initiated by the other party or disclosed at its commencement. However, the requirements that the private business relationship be entirely voluntary and that the public employee not receive special or favorable treatment of substantial value because of his position continue to apply, and the public employee must disclose the private business relationship in writing before supervising or taking any official action involving the other party.

Example: A firefighter was promoted to Lieutenant in the Fire Department. On his own time, he operates a house painting business in which he employs some of the other firefighters, paying them the same rate as his non-firefighter employees. Because the company's firefighter employees were not under the Lieutenant's official authority when the private business relationships began, there was no requirement that those relationships have been initiated by them or disclosed at that time. However, the private business relationships now could create an appearance that the Lieutenant could be unduly influenced in his official dealings with them, for example, with respect to detail assignments. Therefore, the Lieutenant must make a public written disclosure of the facts concerning those private business relationships to his appointing authority, the Fire Chief, and he cannot treat the firefighters who privately work for him differently from the

firefighters who do not privately work for him. In addition, going forward, he cannot initiate a private business relationship with firefighters under his official authority who do not already work for him privately. He may hire them only if they approach him seeking private employment, he offers them the same terms and conditions of employment as his other private employees, and he makes a public written disclosure of the facts.

B. The Private Business Relationship Or Other Private Dealing Must Be Entirely Voluntary.

A private business relationship or other private dealing between a public employee and someone under his official authority or with whom he has official dealings must be entirely voluntary on the part of the other party. To determine whether a transaction is voluntary, the Commission will consider whether there is any evidence that the other party would not have entered into the private business relationship or other private dealing voluntarily, such as a statement by the other party that he or she would not have entered into the relationship or dealing absent the official relationship, or special terms and conditions that favor the public employee, and that the other party has not given to anyone else.

Example: A Superintendent of Schools arranged for a school department plumber to do work at his house. The Superintendent unilaterally determined the price that he would pay for the work and paid that amount, which was lower than the amount that the plumber would have charged someone else. The plumber stated that he felt uncomfortable discussing price with his boss. This was not a voluntary transaction, and the Superintendent violated § 23(b)(2).⁴⁷

C. The Public Employee Cannot Accept any Special or Favorable Treatment of Substantial Value Even if the Other Party is Willing to Give Such Treatment.

Public employees cannot accept anything of substantial value that is given to them because of their official position.⁴⁸ This means that, even if a person under a public employee's official authority, or having official dealings with a public employee, is willing to give special or favorable treatment to the public employee in the context of a private business relationship, the public employee may not accept such treatment. Examples of preferential treatment that may have substantial value include preference in scheduling and price discounts.

Example: A vendor who wishes to secure the goodwill of a public employee who makes purchasing decisions for her agency offers to sell the municipal employee a new computer for half the advertised price, a savings in excess of \$50. Even though the vendor is voluntarily initiating this transaction, it is impermissible because the public employee is being offered a discount of substantial value because of her official position.

⁴⁷ *In Re Foresteire*, 2009 SEC 2220, 2224.

⁴⁸ G.L. c. 268A, § 23(b)(2)(i). This provision was added to c. 268A in 2009 as part of Chapter 28 of the Acts of 2009.

D. A Public Employee Must Publicly Disclose in Writing Any Private Business Relationship Or Other Private Dealing With Those Under His Official Authority, or With Whom He Has Official Dealings.

G.L. c. 268A, § 23(b)(3) provides that, in circumstances in which there could be an appearance of favoritism or bias in their official actions, public employees may eliminate that appearance of a conflict by making a written disclosure to their appointing authorities, or, if they do not have an appointing authority (for instance, because they are elected), in a manner which is public in nature.⁴⁹ In the context of private business relationships and other private dealings between public employees and those under their official authority, or with whom they have official dealings, the Commission has read § 23(b)(3) in conjunction with the prohibition of § 23(b)(2)(ii) and required “something more than the usual disclosure.”⁵⁰ In particular, the Commission has stated that a public employee’s private business relationship or other private dealing with a person or entity under his official authority or with whom he has official dealings will violate § 23(b)(3) unless the public employee makes a public written disclosure which states facts clearly showing that the private business relationship or other private dealing was entirely voluntary and was initiated by the other party.

Such a written disclosure must be made before the public employee acts in an official capacity as to the other party in any circumstances in which the private business relationship or other private dealing will create an appearance of improper influence or favoritism. The safest course for a public employee considering entering into a private business relationship or other private dealing with a person or entity under his official authority, or with whom he has official dealings, will be to make such a written disclosure when the parties enter into that private business relationship or private dealing, because the need to act officially may arise on short notice.

Disclosure forms and instructions are available on the Commission’s website. An appointing authority who receives such a disclosure from a public employee he has appointed may direct the public employee to act or refrain from taking an official action based on information received in such a disclosure.

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This Advisory is not a substitute for advice specific to a particular situation, nor does it mention every aspect of the law that may apply in a particular situation. Public employees can obtain free, confidential advice about the conflict of interest law from the Commission’s Legal Division by submitting an electronic request on our website, www.mass.gov/ethics, by calling the Commission at (617) 371-9500 and asking to speak to the Attorney of the Day, or by submitting a written request for advice to the Commission at One Ashburton Place, Room 619, Boston, MA 02108, Attn: Legal Division.

⁴⁹ Members of the General Court file such disclosures with the House or Senate clerk or the State Ethics Commission; elected state or county employees file them with the State Ethics Commission; elected municipal employees file them with the municipal clerk; elected regional school committee members file them with the clerk or secretary of the committee.

⁵⁰ EC-COI-92-7.